

Private foundations; excess qualifying distributions carryover of transferor. A private foundation that had a carryover of excess qualifying distributions as described in section 4942(i) of the Code transferred all its assets to another private foundation that was controlled by the same persons who controlled the first foundation. The transferee foundation may reduce its distributable amount under section 4942(d) by such carryover.

Advice has been requested whether, for purposes of section 4942(i) of the Internal Revenue Code of 1954, a transferee private foundation may reduce its 'distributable amount' (as defined in section 4942(d)) by the excess qualifying distributions carryover of a transferor private foundation.

Private Foundation M, which has a carryover of excess qualifying distributions as described in section 4942(i) of the Code and section 53.4942(a)-3(e) of the Foundation Excise Tax Regulations, transferred all of its net assets to Private Foundation N in a transfer qualifying under section 507(b)(2). Private Foundation M is controlled, within the meaning of section 1.482-1(a)(3) of the Income Tax Regulations, by the same persons who control Private Foundation N.

Section 1.507-3(a)(9)(i) of the Income Tax Regulations provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of section 1.482-1(a)(3)), directly or indirectly, by the same person or persons which controlled the transferor private foundation, for purposes of sections 4940 through 4948 and 507 through 509 of the Code, such a transferee private foundation shall be treated as if it were the transferor.

Because Private Foundation M and N are controlled by the same persons, the transferee foundation, N, shall be treated as if it were the transferor foundation, M, pursuant to section 1.507-3(a)(9)(i) of the regulations. Accordingly, for purposes of determining its distribution requirements under section 4942 of the Code, Private Foundation N may reduce its distributable amount by the excess qualifying distributions carryover of Private Foundation M.